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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,858

09/29/2006

Stefan Sommer

60680-2121

8118

68459 7590 04/04/2011  
MARSHALL & MELHORN, LLC  
FOUR SEAGATE  
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EXAMINER

LEONG, JONATHAN G

ART UNIT

PAPER NUMBER

1725

MAIL DATE

DELIVERY MODE

04/04/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,858	<b>Applicant(s)</b> SOMMER ET AL.	
	<b>Examiner</b> JONATHAN G. LEONG	<b>Art Unit</b> 1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 18, 20-26 and 28-38 is/are pending in the application.
- 4a) Of the above claim(s) 26 and 28-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18, 20-25, 37, and 38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/27/2011 has been entered.

### ***Election/Restrictions***

2. The Examiner notes that the restriction requirement was made final in the previous Office Action mailed 4/27/2010. The Applicant may petition from the requirement under 37 CFR 1.144.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 18, 20-25, 37 and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 18, the claim limitation “and within the first plate form no continuous channel linking one edge of the plate with another edge of the plate” is new matter because the instant specification does not describe such claim limitation in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Particularly, Fig. 3a and [0056] of the published specification appear to support a first plate wherein the cavities form numerous continuous channels linking one edge of the plate with another edge of the plate. Such continuous channels are in between each row of "H" shaped protrusions. Also, tortuous continuous channels are located throughout the first plate linking one edge of the plate with another edge of the plate. Thus, said claim limitation fails to comply with the written description requirement.

5. Claims 18, 20-25, 37 and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 18, the claim limitation “and within the first plate form no continuous channel linking one edge of the plate with another edge of the plate” is not enabled by the instant specification because such claim limitation would render the first plate inoperable for its intended purpose. A first plate that lacks a continuous channel linking one edge of the plate with another edge of the plate would cease to function as a separator since the fluid traversing said separator is required to flow from an inlet to an

Art Unit: 1725

outlet of said separator, thus requiring a continuous channel linking one edge of the plate with another edge of the plate. Further, there are no working examples in the instant specification of a first plate wherein cavities within said first plate form no continuous channel linking one edge of the plate with another edge of the plate so that the ordinary artisan would be able to make and/or use the invention. Also, the instant specification lacks direction provided by the inventor for the ordinary artisan to make and/or use the invention as claimed.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 18, 20-25, 37 and 38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 18, the claim limitation “and within the first plate form no continuous channel linking one edge of the plate with another edge of the plate” is indefinite because it is unclear how the first plate’s cavities could possibly have no continuous channels linking one edge of the plate with another edge of the plate especially in light of the broadness of the term “edge”. As an example, protrusions are a part of the first plate, thus, any edge of one of said protrusions would read on the claim terminology. Likewise, any edge of any of the physical features of said first plate, such as the inlet and outlet would also read on the claim terminology.

Art Unit: 1725

***Response to Arguments***

8. Applicant's arguments with respect to claims 18, 20-25, 37 and 38 have been considered but are moot in view of the new ground(s) of rejection (see above rejections under 112).

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN G. LEONG whose telephone number is (571) 270-1292. The examiner can normally be reached on M-Th 8:00 AM - 5:00 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Basia Ridley can be reached on (571) 272-1453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. G. L./  
Examiner, Art Unit 1725  
3/17/2011

/Basia Ridley/  
Supervisory Patent Examiner, Art Unit 1725